



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FTI/154616

PRELIMINARY RECITALS

Pursuant to a petition filed January 08, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Yia Xiong, Income Maintenance Specialist II
Milwaukee County Department of Human Services
1220 W. Vliet Street
1st Floor, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of NA.
2. On July 13, 2012, the Public Assistance Collections Unit sent the Petitioner a written notice, indicating that her tax refunds would be intercepted to satisfy a \$2,400 FoodShare overpayment. (Exhibit 9, pg. 6)

3. The notice was sent to Petitioner at post-office box [REDACTED] (Exhibit 9, pgs. 6 and 7)
4. The post office box was Petitioner's correct address until June 2012. However, the notice was forwarded to Petitioner's new address and she timely received the notice. (Testimony of Petitioner)
5. The Petitioner attempted to resolve the issue, by contacting the police to report the theft of her identity / FoodShare card and by contacting various agencies in Wisconsin. (Testimony of Petitioner)
6. The Petitioner ultimately filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 8, 2014. (Exhibit 1)

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely.

A party has 30-days from the date of the notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2 In this case, the date of the notice was July 13, 2012. As such, Petitioner needed to file her appeal by August 12, 2012. Her appeal was not filed until January 8, 2014, well past the thirty day deadline. As such, her appeal is untimely and there is no jurisdiction to hear the merits of her appeal.

The Petitioner asked for consideration, asserting that she has made efforts to resolve the matter, including reporting to police that her sister stole her FoodShare card and used her identity to continue receiving Foodshare benefits. Regrettably, there is nothing the Division of Hearings and Appeals can do for the Petitioner, because her appeal is untimely.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 28th day of February, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 28, 2014.

Milwaukee County Department of Human Services
Public Assistance Collection Unit